

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Hutchinson	Team: Team # 1	CCRB Case #: 200903235	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/03/2009 7:45 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 9/3/2010	EO SOL 9/3/2010	
Date/Time CV Reported Wed, 03/04/2009 8:38 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/04/2009 8:38 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Amaury Soriano	27412	946283	046 PCT
2. POM Rafael Perdomo	21268	942338	046 PCT
3. SGT Daniel Mufaddi	01854	928822	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jim Strauss	27749	946299	046 PCT
2. POM Brian Wolvers	28598	946399	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafael Perdomo	Discourtesy: PO Rafael Perdomo spoke obscenely and/or rudely to § 87(2)(b)	[REDACTED]
B.POM Amaury Soriano	Abuse: PO Amaury Soriano frisked § 87(2)(b)	[REDACTED]
C.POM Amaury Soriano	Abuse: PO Amaury Soriano searched § 87(2)(b)	[REDACTED]
D.SGT Daniel Mufaddi	Abuse: Sgt. Daniel Mufaddi failed to supervise the frisk of § 87(2)(b)	[REDACTED]
E.POM Amaury Soriano	Discourtesy: PO Amaury Soriano spoke obscenely and/or rudely to § 87(2)(b)	[REDACTED]
[REDACTED]	§ 87(4-b), § 87(2)(g)	[REDACTED]

## Synopsis

On March 4, 2009, § 87(2)(b) a resident of § 87(2)(b) in the Bronx, called the CCRB call processing system to file the following complaint on behalf of himself and his friend, § 87(2)(b) a resident of § 87(2)(b) in the Bronx.

On March 3, 2009, at approximately 7:45 pm, § 87(2)(b) and § 87(2)(b) were riding in § 87(2)(b)'s vehicle when they were pulled over by a marked police van § 87(2)(b) in the Bronx. As PO Rafael Perdomo of the 46<sup>th</sup> Precinct recovered § 87(2)(b)'s identification and vehicle registration information, § 87(2)(b)'s neighbor, § 87(2)(b) approached § 87(2)(b)'s vehicle to inquire about why § 87(2)(b) had been pulled over. PO Perdomo allegedly yelled at § 87(2)(b) to, "Get the fuck away from the vehicle" [**Allegation A**]. When § 87(2)(b) did not respond, PO Amaury Soriano of the 46<sup>th</sup> Precinct, under the supervision of Sgt. Daniel Mufaddi of the 46<sup>th</sup> Precinct, allegedly approached § 87(2)(b) obtained his identification, and frisked him [**Allegations B and C**]. PO Soriano allegedly entered several of § 87(2)(b)'s pockets and removed several items [**Allegation D**]. While frisking § 87(2)(b) PO Soriano allegedly said, "Shut the fuck up," and "Give me your fucking ID" [**Allegation E**]. § 87(2)(b) was issued a summons for unreasonable noise due to a loud muffler and § 87(2)(b) was issued a summons for disorderly conduct due to his failure to disperse. § 87(4-b), § 87(2)(g)

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on March 12, 2009 (encl. 10a-10g). § 87(2)(b)

§ 87(2)(g) (encl. 8a-8b).

On March 3, 2009, at approximately 7:50 pm, § 87(2)(b) was driving his vehicle, a § 87(2)(b) § 87(2)(b) with his brother-in-law, § 87(2)(b) southbound on § 87(2)(b) § 87(2)(b) in the Bronx. § 87(2)(b) stated that he has made no modifications to any of the factory-installed components anywhere on the vehicle. § 87(2)(b) stopped at the stop sign at § 87(2)(b) § 87(2)(b) and observed a police van double-parked outside the grocery store at § 87(2)(b) § 87(2)(b) between § 87(2)(b) § 87(2)(b). § 87(2)(b) stated that it appeared that the police officers inside the van were observing several individuals, who are friends of § 87(2)(b) inside the grocery store. § 87(2)(b) put his car in neutral and rolled past the police van, to the parking lot where he usually parks his car, next to § 87(2)(b) § 87(2)(b).

Before he could enter the parking lot, § 87(2)(b) saw that the police van had turned on its turret lights and was following him. § 87(2)(b) pulled partially into the driveway of the parking lot and parked his car in front of the closed gate. He turned off his engine and put his keys on the roof of the car. Six or seven uniformed male police officers exited the van and two officers approached either side of § 87(2)(b)'s vehicle while the others remained next to the van. An officer, identified by § 87(2)(b) from his summons as PO Jim Strauss of the 46<sup>th</sup> Precinct but ultimately identified by the investigation as PO § 87(2)(b) Perdomo of the 46<sup>th</sup> Precinct, asked § 87(2)(b) for his driver's license and he handed his license

and insurance information to PO Perdomo. § 87(2)(b) described PO Perdomo as a Hispanic male uniformed officer in his late-twenties, standing approximately five feet, four inches tall, with a beard and a “chunky” build. PO Perdomo had been riding in the front passenger seat of the van and was wearing a hat. § 87(2)(b) said, “Officer, would you mind telling me the reason why you pulled me over?” PO Perdomo replied, “Tinted windows.” § 87(2)(b) then said, “Do your job, officer. That’s all I’ve got to say.” § 87(2)(b) stated that he did not read PO Perdomo’s nameplate or badge at any point during the interaction.

§ 87(2)(b) s friend, § 87(2)(b) had parked his car across § 87(2)(b) from where § 87(2)(b) was pulled over, in front of his residence at § 87(2)(b) and was locking his car when § 87(2)(b) was pulled over. At an unknown point during § 87(2)(b) s interaction with PO Perdomo, § 87(2)(b) called to § 87(2)(b) from across § 87(2)(b) a distance of approximately fifteen feet, and said, § 87(2)(b) what happened?” § 87(2)(b) replied, “I don’t know, I got pulled over.” § 87(2)(b) who is hearing-impaired, again asked what happened and § 87(2)(b) said, “I got pulled over, don’t worry about it.” PO Perdomo yelled at § 87(2)(b) from across the street, “Get the fuck out of here. Beat it. Didn’t I tell you to leave?”

As he walked away, § 87(2)(b) informed PO Perdomo that he was a married man who works and asked him why he was speaking to him in such a manner. Several officers, identified by the investigation as PO Amaury Soriano, PO Brian Wolvers, and Sgt. Daniel Mufaddi, all of the 46<sup>th</sup> Precinct at the time of the incident, exited the van and approached § 87(2)(b). At some point, PO Soriano told § 87(2)(b) to, “Shut the fuck up. Give me your ID. Give me your fucking ID.” § 87(2)(b) stated that multiple officers cursed at § 87(2)(b) including a Caucasian male officer in his mid-twenties, standing approximately five feet, four inches tall, with blond hair. § 87(2)(b) was unable to articulate the specific words used by the Caucasian male officer who allegedly cursed at § 87(2)(b). PO Perdomo issued § 87(2)(b) a summons for disorderly conduct. The summons was signed by PO Soriano.

While § 87(2)(b) was waiting for the officer to come back to his window, he called his friend, § 87(2)(b) a retired NYPD officer who resides at § 87(2)(b). § 87(2)(b) came to his window and later came out into the street. Eventually, PO Perdomo walked back to § 87(2)(b) s window and handed him a summons for unreasonable noise from the muffler.

§ 87(2)(b) was presented with a **single photo display** (encl. 11a-11m) at the CCRB on August 27, 2009. The single photo display consisted of the five officers with whom § 87(2)(b) likely interacted on March 3, 2009, at approximately 7:45 pm, in the vicinity of § 87(2)(b) in the Bronx. § 87(2)(b) § 87(2)(g)

Photograph one depicted PO Rafael Perdomo of the 46<sup>th</sup> Precinct. § 87(2)(b) stated that PO Perdomo was driving the marked police van that stopped his vehicle on the date of the incident. PO Perdomo exited the vehicle, approached § 87(2)(b) s vehicle, and, upon recognizing § 87(2)(b) said, “Oh, it’s you.” PO Perdomo obtained § 87(2)(b) s driver’s license and registration information, handed the documentation to another officer, who § 87(2)(b) identified as “PO Strauss,” and instructed the officer to issue § 87(2)(b) a summons. § 87(2)(b) stated that the officer whom he identified as “PO Strauss” was the officer who used profanity toward § 87(2)(b) throughout the interaction. § 87(2)(b) stated that, while the officer was preparing his summons, PO Perdomo got back into the police van. When § 87(2)(b) approached § 87(2)(b) s vehicle to ask him why he had been pulled over, PO Perdomo exited his vehicle, stood by the driver’s door, and observed officers approach § 87(2)(b) and frisk him. § 87(2)(b) did not identify PO Perdomo by name.

Photograph two depicted PO Brian Wolvers of the 46<sup>th</sup> Precinct. § 87(2)(b) stated that PO Wolvers was one of three officers to approach § 87(2)(b) after he approached § 87(2)(b) s vehicle. § 87(2)(b) described one of the other officers as a young, African-American male. The two officers ran toward § 87(2)(b) after he asked § 87(2)(b) why he had been pulled over and patted the outside of his clothing before issuing him a summons. § 87(2)(b) stated that PO Wolvers may have participated in frisking § 87(2)(b). § 87(2)(b) did not identify PO Wolvers by name.

Photograph three depicted PO Amaury Soriano of the 46<sup>th</sup> Precinct. § 87(2)(b) stated that PO Soriano accompanied PO Wolverers in approaching § 87(2)(b) following the stop of § 87(2)(b)'s vehicle. PO Soriano was the "young, African-American male" that § 87(2)(b) described when he was explaining PO Wolverers' role in the interaction. PO Soriano repeatedly cursed at § 87(2)(b) during the interaction. At the time of the single photo display presentation, § 87(2)(b) could not recall the specific profanity used by PO Soriano during the interaction. § 87(2)(b) stated that, since all three officers who approached § 87(2)(b) stood extremely close to § 87(2)(b) during the interaction, he was unable to discern whether one, two, or all officers participated in frisking § 87(2)(b). § 87(2)(b) stated that, of the three officers who approached § 87(2)(b), PO Soriano was the only officer who definitely placed his hands on § 87(2)(b)'s body. § 87(2)(b) did not identify PO Soriano by name.

Photograph four depicted PO Jim Strauss of the 46<sup>th</sup> Precinct. § 87(2)(b) stated that he did not recognize the photograph of PO Strauss. § 87(2)(b) stated that, unless the officer was inside the police van for the duration of the incident, he was not present at the location. § 87(2)(b) observed officers who did not exit the van during the interaction but he did not observe the officer depicted in photograph four. § 87(2)(b) did not identify PO Strauss by name.

Photograph five depicted Sgt. Daniel Mufaddi of the 46<sup>th</sup> Precinct. § 87(2)(b) stated that the physical similarities between Sgt. Mufaddi and PO Wolverers, depicted in photograph two, made it difficult for him to distinguish their separate roles during the interaction. § 87(2)(b) stated that Sgt. Mufaddi was most likely one of the three officers who approached § 87(2)(b) following the stop of § 87(2)(b)'s vehicle. § 87(2)(b) stated that Sgt. Mufaddi may have participated in frisking § 87(2)(b). § 87(2)(b) did not identify Sgt. Mufaddi by name.

§ 87(2)(b) was interviewed at the CCRB on March 12, 2009 (encl. 12a-12f). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Approximately five or six male police officers, identified by the investigation as PO Perdomo, PO Strauss, PO Soriano, PO Wolverers, and Sgt. Mufaddi, exited the police van and surrounded § 87(2)(b)'s vehicle. Two officers approached his window, one or two officers approached the front passenger-side window and two officers stood behind § 87(2)(b)'s vehicle. An officer, identified by the investigation as PO Soriano, approached § 87(2)(b)'s window and asked him for his license and registration. § 87(2)(b) described PO Soriano as a dark-skinned Hispanic male officer in his late-twenties, standing approximately six feet, two inches tall, weighing approximately two-hundred-ten pounds, with a medium build. § 87(2)(b) provided PO Soriano with his paperwork and he walked back to the van.

An officer, identified by the investigation as PO Perdomo, screamed at § 87(2)(b) "Get the fuck away from the car." § 87(2)(b) described PO Perdomo as a Hispanic male uniformed officer who was approximately thirty-years-old, with a short, "chubby" stature, wearing a beard. When § 87(2)(b) looked over at him, PO Perdomo said, "Yeah, I'm talking to you. Get the fuck away from the car." At the time, § 87(2)(b) was holding an unlit cigarette in one hand and a lighter in the other. § 87(2)(b) took two steps away from § 87(2)(b)'s vehicle and bent to light his cigarette. When he looked up, three officers, identified by the investigation as PO Soriano, PO Perdomo and either PO Wolverers or Sgt. Mufaddi, were running at him, like they were about to tackle him. § 87(2)(b) became very nervous and asked PO Soriano what the problem was. PO Soriano said, "I told you three fucking times and you didn't listen. Give me your fucking ID." § 87(2)(b) handed the officer his identification and replied that he was trying to move away from the car but that he has a bad leg which prevents him from moving quickly. PO Soriano said, "I don't wanna hear that shit, get your ass up against that car."

§ 87(2)(b) complied with PO Soriano's orders and put his hands up against a van parked across § 87(2)(b) from his own vehicle. One of the other two officers who ran over to § 87(2)(b) identified by

the investigation as either PO Wolvers or Sgt. Mufaddi, frisked him and searched inside the pockets of his jacket. The officer patted § 87(2)(b)'s right front pants pocket and removed his wallet, then patted his left front pants pocket and removed his keys. The officer then patted § 87(2)(b)'s outside jacket pockets, unzipped them, and removed a bottle of Visine eye drops, an iPod, and chapstick. § 87(2)(b) described the officer who frisked and searched him as a Caucasian male uniformed officer in his early-thirties, standing approximately five feet, eleven inches tall, with a medium-to-skinny build and a bald spot. The officer had previously been one of the two officers standing at § 87(2)(b)'s window. While the officer was searching § 87(2)(b) PO Perdomo, stood next to him, watching.

When the Caucasian officer found the bottle of Visine eye drops, PO Soriano asked § 87(2)(b) if he smoked marijuana. § 87(2)(b) informed PO Soriano that he worked in a dusty parking garage and that he did not smoke marijuana. When PO Soriano asked why he had not moved away from § 87(2)(b)'s vehicle immediately upon PO Perdomo's orders, § 87(2)(b) replied that he is hard of hearing and could not immediately understand what the officer was telling him to do. PO Soriano said, "I'm gonna summons you for not listening. Next time, fucking listen." PO Soriano wrote a summons for disorderly conduct, handed it to § 87(2)(b) then handed the summons book to an unidentified male officer. § 87(2)(b) described the unidentified officer as a dark-skinned Hispanic male uniformed officer, standing approximately six feet, three inches tall and weighing approximately two-hundred-forty pounds. The unidentified officer had previously been riding in the rear row of seats in the van. § 87(2)(b) observed the officer writing in the summons book and assumed that he intended to issue § 87(2)(b) a summons.

On August 18, 2009, the undersigned investigator contacted § 87(2)(b) in order to schedule a single photo display presentation. An appointment was scheduled for § 87(2)(b) on August 27, 2009. On August 27, 2009, § 87(2)(b) missed his first single photo display presentation appointment and a missed appointment letter was mailed to his address. On September 8, 2009, § 87(2)(b) called the investigator and scheduled an appointment to view a single photo display on September 19, 2009. On September 19, 2009, § 87(2)(b) missed his second appointment. A search of the Department of Correction inmate database did not reveal any incarcerated individuals by § 87(2)(b)'s name. To date, no letters have been returned to the CCRB by the US Postal Service.

### **Results of Investigation**

#### **Civilian Witness Statements**

§ 87(2)(b) was interviewed at the CCRB on March 12, 2009 (encl. 14a-14e). § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)

On March 3, 2009, at approximately 7:45 pm, § 87(2)(b) was sitting in his living room, writing at a table next to a front window that faced § 87(2)(b). Out his front window, § 87(2)(b) saw a police officer standing next to § 87(2)(b)'s window and another officer approaching § 87(2)(b) before receiving a phone call from § 87(2)(b). § 87(2)(b) described the officer standing next to § 87(2)(b)'s window as a Caucasian male uniformed officer, standing approximately five feet, ten inches tall, wearing a police-issued cap. By the time § 87(2)(b) exited his residence, the officer who had been interacting with § 87(2)(b) had returned to the police van and was sitting inside. Only one officer was standing outside the van, conferring with the officers sitting inside the van.

§ 87(2)(b) was interviewed by Investigator Jacqueline Asencio on March 12, 2009, at § 87(2)(b) (encl. 13a-13e). § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

On March 3, 2009, § 87(2)(b) stopped the car outside of the parking lot in which he usually parks his car so that § 87(2)(b) could open the gate. At that point, a marked police van turned on its turret lights and § 87(2)(b) told § 87(2)(b) to stay in the car because it seemed that the officers were going to stop them.

Approximately four male uniformed officers exited the police van; at the same time, § 87(2)(b)'s friend, § 87(2)(b) exited his car and asked § 87(2)(b) "What happened?" An unidentified officer told § 87(2)(b) "Oh, move away from there. Move away from the car." Two or three unidentified officers told § 87(2)(b) "Get away from here. We have him stopped." § 87(2)(b) also stated that he witnessed the officers push § 87(2)(b) against the side of the police van.

The officers searched inside § 87(2)(b)'s pockets and requested his identification. § 87(2)(b) stated that he observed § 87(2)(b)'s interaction with the officers from § 87(2)(b)'s car and stated that this took place approximately ten feet or more from where he was sitting. § 87(2)(b) stated that he looked over and saw what was taking place but quickly turned around and did not look any further.

### Witnesses Not Interviewed

On March 18, 2009, the undersigned investigator contacted § 87(2)(b) in order to obtain contact information for § 87(2)(b) one of the passengers in § 87(2)(b)'s vehicle at the time of the incident. § 87(2)(b) informed the investigator that § 87(2)(b) was in the hospital as a result of an automobile accident and that he had explicitly asked § 87(2)(b) that he not provide his contact information to the CCRB. § 87(2)(b) stated that § 87(2)(b) had informed him that he was unwilling to cooperate with the investigation, citing time restraints and fears regarding deteriorating relations with the police department as the reasons for his hesitancy. A Lexis Nexis search for § 87(2)(b)'s contact information was requested on March 31, 2009 but no relevant results were returned.

### Police Officer Statements

**PO Amaury Soriano** of the 46<sup>th</sup> Precinct was interviewed at the CCRB on April 9, 2009 (encl. 15a-15f). PO Soriano is a § 87(2)(b)

§ 87(2)(b) He is a one-year-veteran of the NYPD. On March 3, 2009, PO Soriano worked an impact tour from 5:30 pm until 2:05 am the next day. He was assigned to marked van 5967, with PO Jim Strauss, PO Rafael Perdomo, PO Brian Wolvers, and Sgt. Daniel Mufaddi, all of the 46<sup>th</sup> Precinct. All officers were dressed in uniform.

PO Soriano's **memo book** (encl. 15a) contained an entry referring to his issuance of a criminal summons to § 87(2)(b) for disorderly conduct, failure to disperse. The officer copy of **summons** § 87(2)(a) CPL § 160.50, § 87(2)(b) (encl. 15c) is unintelligible in most fields but confirmed that PO Soriano issued a criminal summons for an unknown offense in the 46<sup>th</sup> Precinct.

At approximately 7:45 pm, PO Soriano was riding in a marked police van when the van pulled over a § 87(2)(b), identified by the investigation as belonging to § 87(2)(b) for a loud muffler, at an unknown location on § 87(2)(b) in the Bronx. PO Soriano did not recall which officer, if any, specifically ordered the driver of the van to pull over § 87(2)(b)'s vehicle. PO Soriano stated that he and PO Wolvers were sitting in the middle row of seats in the van, PO Perdomo was driving, PO Strauss was sitting in the back row of seats, and Sgt. Mufaddi was sitting in an unknown location in the van.

When PO Perdomo pulled § 87(2)(b) over, PO Soriano approached the rear passenger side of his vehicle. PO Soriano did not recall which of the other officers approached § 87(2)(b)'s vehicle. PO Soriano did not recall which officer interacted with § 87(2)(b) at his window. PO Soriano did not recall whether there were any other passengers inside § 87(2)(b)'s vehicle. The officer who approached § 87(2)(b)'s window asked for his license and registration and he provided both. § 87(2)(b) said, "I'm tired of this shit, just give me the summons."

After a short period of time, all of the officers who had approached § 87(2)(b)'s vehicle got back into the van and PO Strauss began to write § 87(2)(b) a summons for his loud muffler. PO Soriano observed § 87(2)(b) walking from a vehicle parked across the street from where § 87(2)(b)'s vehicle was pulled over, toward § 87(2)(b)'s window. An unidentified officer asked § 87(2)(b) to step away from § 87(2)(b)'s vehicle several times using the intercom system in the van but § 87(2)(b) did not comply. § 87(2)(b) appeared to hear the officer's orders, as he looked toward the van when the officer spoke over the intercom. PO Soriano did not recall the exact words that the officer used in ordering § 87(2)(b) to

step away from § 87(2)(b)'s vehicle but stated that the officer did not curse over the intercom. When the officer spoke over the intercom, § 87(2)(b) was approximately two car-lengths away from the front of the van.

When § 87(2)(b) continued to approach § 87(2)(b)'s vehicle after being asked to move away by the officer on the intercom, PO Soriano exited the van, approached § 87(2)(b) and told him to step away from the vehicle. By the time PO Soriano exited the van, § 87(2)(b) had reached the driver's window of § 87(2)(b)'s vehicle and was speaking with § 87(2)(b). PO Soriano did not recall how many officers accompanied him when he exited the van to approach § 87(2)(b) but recalled that PO Wolvers exited with him and that PO Strauss remained inside the van. When PO Soriano asked § 87(2)(b) to step away from the vehicle, § 87(2)(b) said, "I'm not doing anything wrong." PO Soriano then asked for § 87(2)(b)'s identification and he provided it. PO Soriano brought § 87(2)(b)'s identification back to the van and wrote him a summons for disorderly conduct, failure to disperse. PO Soriano stated that he did not frisk or search § 87(2)(b) at any point during the interaction. He stated that neither he nor any other officer used profanity toward § 87(2)(b) or any other individual at any point during the interaction. PO Soriano stated that he was not aware of what was happening outside the van at any point while he was writing the summons. It took PO Soriano approximately two minutes to write the summons.

**PO Jim Strauss** of the 46<sup>th</sup> Precinct was interviewed at the CCRB on April 9, 2009 (encl. 16a-16e). PO Strauss is a § 87(2)(b). He is a one-year-veteran of the NYPD. On March 3, 2009, PO Strauss worked an impact tour for quality of life enforcement from 5:30 pm until 2:05 am the next day. PO Strauss was assigned to marked van 5967, with PO Amaury Soriano, PO Brian Wolvers, PO Rafael Perdomo, and Sgt. Daniel Mufaddi, all of the 46<sup>th</sup> Precinct.

PO Strauss' **memo book** (encl. 16a) noted the following: at 8:00 pm, PO Strauss issued a criminal summons to § 87(2)(b) in the Bronx for a loud muffler. The agency copy of **summons** § 87(2)(b), § 87(2)(b) (encl. 16d) confirmed that PO Strauss issued § 87(2)(b) a summons for unreasonable noise (muffler) at 8:00 pm on March 3, 2009, § 87(2)(b) in the Bronx. The summons noted that § 87(2)(b) was in violation of subsection 227 of Title 24 of the New York City Administrative Code, which refers to the prohibition against operating circulation devices that are excessively loud. § 87(2)(g)

At approximately 7:45 pm, PO Strauss was sitting in the rear row of seats inside the police van, PO Soriano and PO Wolvers were sitting in the middle row of seats, Sgt. Muffadi was riding in the front passenger seat, and PO Perdomo was driving the van. As § 87(2)(b) passed, PO Perdomo pulled into the street behind him and pulled his vehicle to the side of the road.

While PO Strauss was writing a VTL violation summons for § 87(2)(b) another individual, later identified as § 87(2)(b) approached § 87(2)(b)'s vehicle from across § 87(2)(b). An unidentified officer sitting inside the police van told § 87(2)(b) to step away from the vehicle over the van's intercom. § 87(2)(b) looked back at the van, then turned back to § 87(2)(b)'s window and continued to converse with § 87(2)(b). The officer again asked § 87(2)(b) to step away from § 87(2)(b)'s vehicle over the PA system and § 87(2)(b) continued to ignore the officer's orders. PO Strauss stated that PO Soriano was most likely one of the officers who approached § 87(2)(b) as he eventually got into the van with § 87(2)(b)'s driver's license. After PO Soriano got into the van with § 87(2)(b)'s driver's license, he proceeded to write him a summons for disorderly conduct. PO Strauss did not see any officer frisk or search § 87(2)(b) nor did he hear any officer use profanity toward § 87(2)(b).

**Sgt. Daniel Mufaddi** of the 46<sup>th</sup> Precinct was interviewed at the CCRB on May 7, 2009 (encl. 17a-17e). Sgt. Mufaddi is a § 87(2)(b). He is a seven-year veteran of the NYPD. On March 3, 2009, Sgt. Mufaddi worked from 5:15 pm until 4:12 am on the following day as the impact sergeant within the confines of the 46<sup>th</sup> Precinct. Sgt. Mufaddi was assigned to marked police van

5967, with PO Jim Strauss, PO Amaury Soriano, PO Rafael Perdomo, and PO Brian Wolvers, all of the 46<sup>th</sup> Precinct. The officers were all dressed in uniform.

Sgt. Mufaddi's **memo book** (encl. 17c) confirmed that he was assigned to marked van 5967 on the date of the incident, with PO Soriano, PO Strauss, PO Perdomo, and PO Wolvers. He did not have any memo book entries concerning the above incident. § 87(2)(g)

At some point on the date of the incident, an individual, identified by the investigation as § 87(2)(b) approached § 87(2)(b)'s vehicle, which had been stopped by police officers, from across the street. Sgt. Mufaddi did not recall how close § 87(2)(b) got to either § 87(2)(b)'s vehicle or to the police van. Sgt. Mufaddi stated that he did not think any officers issued § 87(2)(b) any orders over the van's intercom system. Officers interacted with § 87(2)(b) but Sgt. Mufaddi did not hear or see the interaction. Sgt. Mufaddi did not recall seeing any officer frisk or search § 87(2)(b).

**PO Rafael Perdomo** of the 46<sup>th</sup> Precinct was interviewed at the CCRB on May 13, 2009 (encl. 18a-18b). PO Perdomo is a thirty-eight-year-old Hispanic male officer, standing five feet, nine inches tall, weighing two hundred and five pounds, with black hair and brown eyes. He is a two-year-veteran of the NYPD. On March 3, 2009, PO Perdomo worked 5:30 pm until 2:00 am the following day, on an Impact assignment within the confines of the 46<sup>th</sup> Precinct. PO Perdomo worked with PO Brian Wolvers, PO Amaury Soriano, and PO Jim Strauss of the 46<sup>th</sup> Precinct. The officers were dressed in uniform and were assigned to a marked van. PO Perdomo did not have any memo book entries concerning the incident. PO Perdomo's statement was consistent with those of the other officers interviewed, with the following inconsistencies and additional information.

At approximately 7:45 pm, PO Perdomo was driving the marked police van containing himself, PO Wolvers, PO Soriano, and PO Strauss, on § 87(2)(b) in the Bronx when the officers heard a vehicle, later identified as belonging to § 87(2)(b) drive by with an unreasonably loud muffler. PO Soriano was riding in the front passenger seat of the van and PO Wolvers and PO Strauss were riding in the rear seats. PO Perdomo activated the van's turret lights and siren and pulled § 87(2)(b)'s vehicle over to the right side of § 87(2)(b). PO Perdomo stated that, although the impact team typically works with a supervising officer, there were no sergeants or other supervising officers on the scene for the stop of § 87(2)(b)'s vehicle.

Shortly after an officer obtained § 87(2)(b)'s driver's license, an individual, later identified as § 87(2)(b) approached § 87(2)(b)'s vehicle from the left side of § 87(2)(b). As soon as the officers in the van observed § 87(2)(b) approaching, they exited the van and instructed him to move away from the vehicle. PO Perdomo recalled that PO Soriano stood next to the passenger side of the police van when he issued instructions to § 87(2)(b) who, by the time the officers exited the van, had walked around the rear of § 87(2)(b)'s vehicle, passing directly in front of the van, to § 87(2)(b)'s front passenger-side window. PO Perdomo stated that the officers initially thought § 87(2)(b) was a disinterested third-party who happened to be crossing the street, albeit in unusually close proximity to a vehicle stop in progress, and therefore did not immediately take action to separate him from § 87(2)(b)'s vehicle.

§ 87(2)(b) did not respond to the officers' repeated requests to step away from § 87(2)(b)'s vehicle. PO Perdomo described § 87(2)(b)'s expression as inquisitive, as if he were questioning why the officers were asking him to move away. PO Perdomo did not hear § 87(2)(b) make any response to the officers' instructions but assumed that he had heard the instructions, based on his physical reaction and demeanor. After § 87(2)(b) did not respond to the officers' instructions, PO Soriano approached him and asked him for his identification. When PO Soriano asked § 87(2)(b) for identification, PO Perdomo exited the van and stood next to the driver's door to observe the interaction.

§ 87(2)(b) handed PO Soriano or another officer his driver's license and PO Soriano patted the outside of his clothing on his chest and back, felt around the waistband of his pants, and patted his pants around his ankles. § 87(2)(b) was cooperative with the frisk and no physical force was used. PO Soriano did not enter any of § 87(2)(b)'s pockets during the frisk. PO Perdomo stated that, since § 87(2)(b) had



already approached § 87(2)(b)'s vehicle several times, the officers suspected that he may have obtained a weapon from § 87(2)(b). After he frisked § 87(2)(b), PO Soriano walked back to the van and wrote him a summons for disorderly conduct, failure to disperse while the other two officers remained standing next to § 87(2)(b).

**PO Brian Wolver**, who was a member of the 46<sup>th</sup> Precinct at the time of the incident, was interviewed at the CCRB on May 28, 2009 (encl. 19a-19d). PO Wolver is a § 87(2)(b).

On March 3, 2009, PO Wolver worked from 5:30 pm until 2:05 am on the following day and was assigned to the 46<sup>th</sup> Precinct impact team with PO Jim Strauss and PO Amaury Soriano. The officers were dressed in uniform and were assigned to a marked police van. PO Wolver did not have any memo book entries concerning the incident. § 87(2)(g)

At approximately 7:45 pm, officers had stopped the vehicle of § 87(2)(b) when an individual, identified as § 87(2)(b), approached the vehicle. § 87(2)(b) approached to closer than three to four feet away from where the officers were standing. The officers told him to move aside several times but he refused. No officers instructed § 87(2)(b) to move away from the vehicle by issuing instructions over the van's intercom.

Officers approached § 87(2)(b) and an unidentified officer frisked him by patting his hands on the outside of § 87(2)(b)'s clothing before issuing him a summons for disorderly conduct, failure to disperse. PO Wolver did not recall which officer frisked § 87(2)(b). He was frisked for weapons but none of his pockets were entered. PO Wolver stated that nothing indicated that § 87(2)(b) was armed, such as a bulge under his clothing, previous to the officer frisking him.

#### **Police Documents**

The SPRINT for **job number** § 87(2)(b) (encl. 20a) confirmed that officers in vehicle number 5967 stopped a vehicle at 8:12 pm on March 3, 2009. The officers resumed patrol at 8:27 pm. The 46<sup>th</sup> Precinct **roll call** (encl. 21a-21d) for tour three on March 3, 2009 confirmed that Sgt. Mufaddi worked from 5:15 pm until 2:12 am on the following day and that PO Soriano, PO Strauss, PO Wolver, and PO Perdomo were assigned to vehicle number 5967 on trainee assignments.

#### **Civilian CCRB and Criminal Conviction History**

Neither § 87(2)(b) nor § 87(2)(b) has had any criminal convictions in the City of New York in the past ten years (encl. 22a-23a). Neither § 87(2)(b) nor § 87(2)(b) has filed any previous complaints with the CCRB (encl. 5a-6a). § 87(2)(b), § 87(2)(a) CPL 160.50

#### **Police Officer CCRB History**

Sgt. Mufaddi has had no allegations of misconduct substantiated in his eight-year tenure with the NYPD (encl. 2a). PO Soriano has had no allegations of misconduct substantiated in his one-year tenure with the NYPD (encl. 4a). PO Perdomo has had one allegation of misconduct substantiated in his three-year tenure with the NYPD, in CCRB case number 200807227 (encl. 3a-3b). In the case, charges were recommended for PO Perdomo.

#### **Notice of Claim**

As of the date of this report, neither § 87(2)(b) nor § 87(2)(b) has filed a notice of claim with the City of New York.

### **Conclusions and Recommendations**

#### **Undisputed Facts**

It is undisputed that several officers in a marked police van stopped § 87(2)(b)'s vehicle § 87(2)(b) in the Bronx at approximately 8:00 pm on March 3, 2009. It is also

undisputed that § 87(2)(b) was issued a summons for unreasonable noise by PO Strauss and that § 87(2)(b) was issued a summons for disorderly conduct by PO Soriano.

### Disputed Facts

It was disputed amongst the officers and civilians interviewed whether § 87(2)(b) approached § 87(2)(b)'s vehicle or whether he ignored repeated instructions from officers to move away from § 87(2)(b)'s vehicle. It was disputed whether PO Perdomo or PO Soriano used profanity in addressing § 87(2)(b). It was also disputed amongst the parties interviewed whether Sgt. Mufaddi was present on the scene and whether any officer frisked or searched § 87(2)(b).

### Officer Identification

Of the officers interviewed, only PO Perdomo and PO Wolvers did not recall Sgt. Mufaddi being present for the above interaction. Since Sgt. Mufaddi recalled being present at the location, and since PO Soriano and PO Strauss recalled his presence, the allegations regarding the frisk and search of § 87(2)(b) will be pled against Sgt. Mufaddi as the supervisor present on the scene.

Since § 87(2)(b) recalled the officer who exited the police van but did not approach him as the officer who allegedly cursed at him upon issuing him the initial instruction to disperse, and since PO Perdomo identified himself as such, the first allegation of discourtesy will be pled against PO Perdomo. Since § 87(2)(b) recalled the officer who issued him a summons as the second officer who allegedly used profanity in addressing him, and since PO Soriano issued § 87(2)(b) a summons for disorderly conduct, the allegation of discourtesy will be pled against PO Soriano. PO Perdomo and PO Soriano match the physical descriptions provided by § 87(2)(b) and § 87(2)(b) of the two officers who allegedly used profanity toward § 87(2)(b). Finally, in his single photo display viewing, § 87(2)(b) confirmed the roles of PO Perdomo and PO Soriano in the interaction and confirmed that either Sgt. Mufaddi or PO Wolvers joined PO Soriano in frisking § 87(2)(b).

### Allegations Not Pled

Since all of the officers interviewed confirmed that § 87(2)(b)'s vehicle was outfitted with a muffler that emitted excessive noise that was audible to the officers sitting in a parked police van, since § 87(2)(b) was eventually issued a summons for unreasonable noise, muffler, § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Since § 87(2)(b)'s vehicle was stopped in order for officers to issue him a summons, no vehicle stop allegation will be pled against Sgt. Mufaddi, the supervising officer on scene.

### Assessment of Evidence

Of the officers interviewed, only PO Soriano, PO Perdomo, and PO Wolvers recalled PO Soriano interacting with § 87(2)(b) after § 87(2)(b)'s vehicle had been stopped. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both PO Perdomo and PO Wolvers recalled PO Soriano patting the outside of § 87(2)(b)'s clothing with his hands after § 87(2)(b) did not respond to repeated requests by officers to move away from § 87(2)(b)'s vehicle. Neither § 87(2)(b) nor § 87(2)(b) specifically recalled any officer frisking § 87(2)(b). However, § 87(2)(b) acknowledged that his attention to the interaction was divided since, while the officers were interacting with § 87(2)(b) he was speaking on the telephone with § 87(2)(b). Furthermore, § 87(2)(b) confirmed § 87(2)(b)'s allegation that an officer searched him. § 87(2)(g)

Although PO Perdomo stated that § 87(2)(b)'s proximity to § 87(2)(b)'s vehicle may have allowed him to obtain items from § 87(2)(b) neither PO Perdomo nor PO Wolver ever obtained information indicating that § 87(2)(b) was in possession of a weapon. PO Wolver stated that, from where he observed the interaction, he was not under the impression that § 87(2)(b) may have been concealing a weapon.

In their CCRB statements, § 87(2)(b) and § 87(2)(b) alleged that an officer, identified by § 87(2)(b) as PO Soriano, entered § 87(2)(b)'s pockets before issuing him a summons. § 87(2)(g)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation A: PO Rafael Perdomo spoke rudely and/or obscenely to** § 87(2)(b)

**Allegation C: PO Amaury Soriano searched** § 87(2)(b)

**Allegation E: PO Amaury Soriano spoke rudely and/or obscenely to** § 87(2)(b)

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation B: PO Amaury Soriano frisked** § 87(2)(b)

**Allegation D: Sgt. Daniel Mufaddi failed to supervise the frisk of** § 87(2)(b)

The investigation determined that Sgt. Mufaddi authorized the frisk of § 87(2)(b) based upon an incorrect interpretation of the legal guidelines dictating street encounters between police officers and civilians. In *People v. DeBour*, 40 N.Y.2d 210 (1976), the New York State Court of Appeals established four levels of police intrusion justified in these encounters by increasing degrees of suspicion (encl. 1a-1o). In *DeBour*, the Court held that an officer may forcibly stop a civilian when he or she believes the individual is committing, has committed, or is about to commit a crime. An officer is justified in stopping a civilian even when the suspected crime is a Penal Law misdemeanor, such as subsection 6 of the New York State disorderly conduct statute which compels a civilian to comply with an officer's lawful order to disperse and which § 87(2)(b) was observed violating.

According to the Court's holding in *DeBour*, an officer may frisk an individual he or she believes is committing, has committed, or is about to commit a crime only in circumstances where the officer believes himself or herself to be in physical danger. PO Soriano did not claim to fear for his or any other officer's safety when he approached § 87(2)(b) and neither PO Perdomo nor PO Wolver suspected that § 87(2)(b) was in possession of a weapon. § 87(2)(g)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(4-b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)

Investigator:  
Jonathan Hutchinson

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: